

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Securities

Plaintiffs filed actions against Nike and several of its corporate officers alleging violations of the Securities Exchange Act of 1934. Plaintiffs allege that defendants made false and misleading statements concerning future earnings in spite of known problems with the company's new manufacturing planning system. Stock prices rose until defendants disclosed that next quarter's results would be much lower than forecast due to implementation problems with the new system. The announcement caused a stock price decline, triggering these actions. Judge King granted defendants' motion to dismiss for failure to state a claim under the rigorous pleading standards of the Private Securities Litigation Reform Act of 1995 and Ninth Circuit cases interpreting it. Plaintiffs were given leave to replead. In re Nike, Inc., Securities Litigation, CV01-332-KI.

Plaintiffs' Counsel:

Gary Grenley (Local)

Defense Counsel:

Peter Koehler (Local)

Employment

A former Forest Service employee filed an action claiming sex and "sex plus" discrimination based upon her marital status. Plaintiff claimed that she was placed on a "surplus" list for re-assignment and that other, similarly situated male employees were re-assigned within the same forest district when she was not. Plaintiff claims she was placed on the list, in part, because defendant knew that plaintiff's husband had been re-assigned to another office. Defendant eventually offered plaintiff re-assignment to a remote northeast corner of Washington state, with the caveat that plaintiff could accept this re-assignment or quit. Plaintiff resigned.

Judge Janice M. Stewart denied a substantial portion of defendant's motion for summary judgment. She held that plaintiff's claims regarding denial of fire duty assignments to women from 1988-1995 fell within a "glass ceiling" allegation of plaintiff's EEO complaint and, thus, were properly exhausted. As for defendant's assertion of a statute

of limitations bar, the court held that plaintiff's claims largely survived under the continuing violation doctrine.

The court also found sufficient evidence to sustain plaintiff's claim of constructive discharge given the nature of the re-assignment offered and the take-it-or leave it aspect of the offer. Judge Stewart also found sufficient evidence to give rise to an inference of discriminatory intent necessary to sustain a claim of pretext.

The court recognized the probable viability of a "sex plus" claim premised upon plaintiff's sex and another characteristic, such as marital status. Rauw v. Glickman, CV 99-1482-ST (Findings & Rec, Aug. 6, 2001; Adopted by Judge Robert E. Jones, 1/3/02).

Plaintiff's Counsel:

Robert J. Miller (Local)

Defense Counsel:

Herb Sundby

Criminal Law

Judge Ann Aiken denied motions to suppress filed by two individuals charged with distributing psilocybin mushrooms. The court rejected claims that the

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information included in an affidavit for a search warrant was "stale," and, in the alternative, held that the search would have fallen within the good faith exception.

The court also held that the investigators' use of night vision goggles did not constitute an impermissible search under Kyllo given the circumstances presented. United States v. Faraday, CR 01-60052-AA (Opinion, January, 2002).

AUSA: Kirk Engdall

Defense Counsel:

James Bustamante (CA),

Randolph Daar (CA)

Procedure

A Dental Industry Group hired the defendant to ship a Winnebago mobile dental van to Hawaii for a trade show. Plaintiff claims it was quoted a price of \$3,000 and was surprised to discover a \$14,000 shipping charge on its American Express bill. Plaintiff filed an action in state court asserting claims for breach of contract, unfair trade practices and fraud. Plaintiff sought \$11,000 in economic damages, \$100,000 in specials along with \$1 million in punitives and attorney fees. After defendant removed the action to federal court, plaintiff amended its complaint to reduce the specials to \$60,000 and delete punitives and attorney fees. Plaintiff then moved

to remand.

Judge Anna J. Brown noted the well-established rule that diversity jurisdiction must be determined as of the date of removal. Thus, any amendment to reduce the amount claimed to fall below the jurisdictional threshold was ineffective. The court declined plaintiff's suggestion that it should follow the lead of a 1997 Northern District of Alabama decision that actually allowed a remand following an amended complaint, despite significant Circuit authority to the contrary.

American Dental Industries, Inc. v. EAX Worldwide, Inc., CV 01-1517-BR (Opinion, Jan. 29, 2002).

Plaintiff's Counsel:

Roy B. Thompson

Defense Counsel:

John H. Chambers

Venue

Plaintiffs filed a declaratory judgment action seeking a determination of the parties' obligations to a lumber company facing numerous damage claims for siding damage under various primary and excess insurance liability policies. All but one of the underlying siding claims was being litigated in various courts throughout California; none of the underlying claims were being

litigated in Oregon. However, the lumber company is an Oregon company and the policies were issued in Oregon with Oregon insurance brokers. Further, the siding was manufactured in Oregon and the lumber company retained warranty and other relevant information at its Oregon headquarters. Considering all of these factors under the Brillhart test, Judge Dennis J. Hubel held that exercise of jurisdiction in Oregon was appropriate.

The court denied a defense motion to transfer venue to the Northern District of California, noting that the coverage issues raised in this case would have little or no impact on issues raised in the underlying damage claims. Under § 1404(a), Judge Hubel found venue proper in Oregon and rejected an alternative motion to stay the case pending resolution of the underlying claims. The Home Indemnity Co., et al. v. Stimson Lumber, et al., CV 01-514-HU (Findings and Rec, Oct. 18, 2001; Adopted by Order of Judge Ancer L. Haggerty, Dec. 19, 2001).

Plaintiffs' Counsel:

Dianne K. Dailey

Defense Counsel:

Edwin C. Perry